

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 70239

1927 York Road Corporation
Margaret Mullen Resident Agent
1401 Autumn Leaf Road
Towson, MD 21286

1927 York Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on March 3, 2010 for a Hearing on a citation for violations under the Baltimore County Zoning Regulation (BCZR) section 4B-101, 4B-102, for the operation of an illegal massage establishment not permitted in an RO zone; section 204, for the operation of a prostitution house in an RO zone, a use not permitted in any zone, on residential property known as 1927 York Road, 21093.

On January 14, 2010, pursuant to Baltimore County Code §3-6-205, Inspector Jerry Chen issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$ 17,800.00 (seventeen thousand eight hundred dollars).

The following persons appeared for the Hearing and testified: Dr. Issam Cheikh, Respondent represented by Nathaniel Fick, Esquire, Detective Ruby of the Baltimore County Police Department and, Jerry Chen, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. This Citation was issued without prior Correction Notice pursuant to the Department's adopted criteria, for a violation that involves prostitution, the display of obscene material or sexual activities as defined in Section 4B-101 of the Baltimore County Zoning Regulations. BCC Section 3-6-205. The Citation was issued on January 14, 2010.

B. Nathaniel Fick, Esq., attorney representing Respondent, noted his objection to the admission of hearsay testimony during this Hearing. The Hearing Officer noted his objection and stated that hearsay testimony is routinely accepted in administrative hearings, and that the hearsay nature of any evidence will be taken into account when the evidence and testimony is evaluated.

C. Code Enforcement Inspector Jerry Chen testified that he issued this Citation based on evidence provided by the Baltimore County Police Department, including a Police Report, and based on his inspection of the property on January 6, 2010. He testified that this is a two story stone house that faces York Road and is located in an R.O. Zone. He was called by Police Detective Ruby on January 6, 2010 and inspected the property. On the first floor he found a living room, foyer and kitchen, and a female detainee identified by the Police as Wenjie Hu. The second level had rooms with four massage tables, a supply room, and a bedroom with personal belongings. In the basement he observed personal effects and clothing. Photographs in the file show a two story stone and siding house, with slate roof, in good repair with a tidy yard. A photograph taken inside the building shows signs that say "New Century Spa – open 7 days a week – open hours, 10:00 AM – 11:00 PM" and "New Century Spa – please use the other door." There do not appear to be any signs outside. Photographs in the file show personal toiletries and clothing in the living room, in another first floor room, in rooms on the second floor, and in the basement. Photographs show the kitchen in active use with multiple appliances, pots and pans, and food on the counters and in the refrigerator.

D. Inspector Chen testified that a customer identified Hu as the person who provided a massage and sexual favor to him on January 6, 2010 and on approximately ten prior occasions. The Police Report states that Detective Ruby observed a male subject entering and then leaving the

premises, stopped his vehicle, and obtained information about this visit and his prior visits. The man said he had paid \$60.00 for a one hour massage and then had removed all his clothing, received a massage, and then had received massage of his penis by Ms. Hu and had given her a \$40 tip. The man returned to the premises with the police and identified Ms. Hu, and provided a written witness statement. In his statement he said he found out about this massage parlor in the City Paper.

E. Inspector Chen testified that also present during his inspection on January 6, 2010 was Inspector Marc Ware of the Maryland Board of Chiropractic and Massage Therapy Examiners, Maryland Department of Health & Mental Hygiene. Inspector Ware determined that Ms. Hu is not licensed to perform massage therapy in Maryland. A Verification of Non-Certification certificate is in the file stating that Wenjie Hu is not and has never been certified or registered as a Licensed Massage Therapist or Registered Massage Practitioner with the State of Maryland.

F. Police Reports in the file state that during the Police search on January 6, 2010, another man arrived at the location for a massage and was interviewed. He told police that he had been a customer on two prior occasions and that female employees who performed the massages would expose their breast and finish his massage by masturbation of his penis, costing \$90 for a half hour. Police Reports in the file state that on November 10, 2009 Detective Ruby was conducting surveillance and stopped a customer who left the premises, and was told that he had been a customer on three prior occasions, and that he was masturbated by an Asian female on two prior visits. Similar Police Reports with interviews of different customers are in the file, dated October 13, 2009 and June 16, 2009.

G. Detective Ruby (Police Department) testified that he prepared the Police Report following the search warrant execution on January 6, 2010. He testified that Ms. Hu was convicted of prostitution the day before this Hearing. Responding to questions from Respondent's attorney, Mr. Fick, Detective Ruby testified that he did not contact Respondent prior to the police raid or before this Citation was issued. Detective Ruby testified that the police were conducting a confidential criminal investigation from October 2009 until the raid in January.

H. Inspector Jerry Chen testified that Baltimore County Code Enforcement was first notified of the violations on January 6, 2010.

I. Attorney Fick proffered that the principal of the corporation that owns this property, 1927 York Road Corporation, is Dr. Issam Cheikh who is a medical doctor specializing in Endocrinology and, has practiced for 39½ years at Union Memorial Hospital in Baltimore. Dr. Cheikh testified that he was part of a group of investors who bought the building to assist Congresswoman Bentley and that when some investors wanted to get out, he bought it and has been renting it out since then. Dr. Cheikh testified that he employed a professional realtor from Coldwell Banker to handle the leasing of the property. The property was leased on April 29, 2009 to Kuei Hsiang Chang, for \$31,200 per year, payable at \$2,600 per month. The lease provides that the tenant will use the premises “only for offices and for no other purpose” and provides that “Tenant will not violate any public law, ordinance or regulation.” Respondent provided a copy of the first page of a Credit Report for the tenant that was obtained by the realtor in April 2009 prior to leasing the property. The credit report gives credit scores ranging from 693 to 762, and shows credit card liabilities totaling nearly \$25,000. The credit report page does not give other information about the tenant.

J. Dr. Cheikh testified that this Citation was the first notice he had of a problem at the property. He testified that if he had been contacted earlier, he would have terminated the lease. He further testified that he has sent the tenant written notice of violations and intent to terminate the lease. He attended court for the criminal prosecution of Ms. Hu and had not seen her before. He testified that he did not meet the tenant until after the police search, and that he visited the property once because he wanted to meet her but only found an old Chinese lady who did not speak English and was cleaning.

K. Attorney Fick stated that Respondent has made a commitment to evict the tenant as quickly as possible, will address the deficiencies of the realtor and will make the property available for inspection. He requested that the civil penalty be rescinded.

L. The evidence clearly shows that an illegal massage parlor was being operated at this location. The evidence shows that at least one unlicensed individual was providing massage services

on a regular and frequent basis including the day of the police search, and there is no evidence that any of the women providing massage services had a license. A Massage Establishment is “[a]ny

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establishment where a massage technician administers a massage to another person for compensation.” BCZR 4B-101. A “Massage Technician” is “[a]n individual who administers a massage to another individual for compensation,” and does not include a “Medical Practitioner” defined as “[a] physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, massage therapist or other similar health professional licensed or certified by the state.” BCZR 101.1. A Massage Establishment can only be located in an M.H. Zone (Manufacturing, Heavy). BCZR 4B-102. This portion of the Citation will be enforced.

M. The evidence clearly shows that an illegal prostitution business was being operated in Respondent’s building. Operation of an illegal business violates County zoning regulations. BCZR Section 102.1 (“No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations....”). This portion of the Citation will be enforced.

N. The evidence shows that the illegal prostitution activities and the illegal massage activities occurred for six to eight months. The police investigation began at least in mid June 2009. The lease to this tenant began on May 15, 2009. Customers interviewed by the police stated that they had visited the location for massage and prostitution services multiple times, and that they discovered the business from advertisements in the City Paper. There is no evidence that either the property owner or the realtor who arranged the lease took steps to determine what office or business uses would be made by the tenant, or to ensure that the use of the property was proper and conformed to zoning and legal requirements. It is reasonable to hold the property owner, who is collecting over \$31,000 per year in rent from the tenant, accountable for taking reasonable steps to ensure that lawful use is being made of the property.

O. Mitigating factors should be considered in determining the appropriate civil penalty and corrective order. Respondent has an appropriate commercial lease with the tenant and relied on a professional real estate agent to screen and select the tenant. Respondent has promptly taken steps to terminate the lease and evict the tenant and has expressed a willingness to make the property

available for inspection. There is no evidence that Dr. Cheikh knew about the illegal activities prior to receiving the Code Enforcement Citation.

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IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$5,000.00 (five thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED to \$1,500.00 (one thousand five hundred dollars) if the violations are corrected by April 26, 2010, with EITHER (1) tenant Kuei Hsiang Chang removed from the premises, OR (2) if tenant Kuei Hsiang Chang is still a tenant in this property, all inappropriate items including massage tables are removed, and a lawful business is being operated within zoning regulations, with corrections confirmed by County inspection.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty as authorized above shall be imposed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 26th day of March 2010

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.

